UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK
-------------------------------------x
ANWAR ALKHATIB,

Plaintiff,

-against-

DECLARATION

NEW YORK MOTOR GROUP LLC, et al.

Case # 13-cv-2337 (ARR)(SMG)

Defendants.
-------------------------------------x

MAMDOH ELTOUBY, hereby declares the truthfulness of the following under the penalties of perjury pursuant to 28 U.S.C. § 1746:

1. This declaration is in opposition to plaintiffs' motion for "spoliation" sanctions. I am one of the four remaining defendants; the others are my daughter Nada and two closed dealerships: New York Motor Group LLC and Planet Motor Cars, Inc. I was the owner of New York Motor Group, which had been a licensed used-car dealership before its closure in early 2014.

2. New York Motor Group leased a vacant lot at 60-20 Northern Blvd. in Woodside, Queens and parked thereon a medium-sized trailer for office space, which included a room known as the finance office. All the plaintiffs met there with Julio Estrada, the dealership's finance manager, in the course of their respective transactions. I was only rarely present at the dealership and didn't participate in (and wasn't present at) those meetings. Plaintiffs' pleadings recite their complained-of meetings with Julio Estrada occurred in an eight-month period: in December, 2012 [Alkhatib & Gabrys]; in January, 2013 [Chowdhury & Ahmed]; in February, 2013 [Freire]; in April, 2013 [Park

& Dong]; in June, 2013 [Tuhin]; and on August 14, 2013 [Banon]. The letters from plaintiffs' counsel in September, 2013 [ie--their exhibits D & E on their motion] were addressed to the dealership with requests to preserve materials, but weren't ever known to me-----as I wasn't ever shown them.

3. During that time my daughter Nada worked at New York Motor Group; her responsibilities included making bank deposits and filing with the DMV the documents necessary to register customers' purchases.

4. Nada and I confirmed at our depositions that the dealership had a video surveillance system during those eight-months, with cameras inside and outside the trailer, with a monitor and DVR inside the trailer. I testified that after I became aware of Julio Estrada allegedly stealing from customers and the dealership, I arranged for additional cameras and an audio recording feature to be added---which I believe was soon after August of 2013. The system's DVR had a hard-drive disk upon which the information would be recorded and preserved for a limited time, until it would be recorded over and be thereby eradicated. I testified of my belief that the retention time of the recorded information was only about eight days.

5. New York Motor Group opened in 2012; its first surveillance system was only video; it mostly failed to operate due to the inexperienced installer having used improper wiring and cheap components. The retention time of the images on its DVR was similarly short. Its DVR was stolen in early 2013; I believe the theft was by one or more of the dealership's workers. I later

asked the owner of a nearby dealership for the name of the person who had installed its surveillance system. I received his recommendation for Yoel Cohen, previously unknown to me, who I hired to install our new system.

6. Yoel Cohen is currently President of YTECHGROUP LTD, an installer of security systems. Its website, ytechgroup.com, describes its services. He installed a new DVR and nailed it to the wall of the trailer to prevent another theft, and he replaced all wiring and added new cameras. The system didn't have a burglar alarm function or any back-up storage beyond the hard-drive of the DVR. I was told by him the system would record over (and erase) the information on the hard drive within two weeks. I didn't anticipate that the dealership would ever need to preserve the information any greater period. He visited the dealership two or three more times in 2013 for repair or to add new components. I believe his last visit was the aforesaid installation of the audio feature and additional cameras in or about August, 2013.

7. The misconduct of finance manager Julio Estrada resulted in the DCA's revocation of the dealership's license, which required its closure in early 2014. The dealership negotiated a lease-termination with its landlord and also arranged with the new tenant, a dealership known as Auto Solution, to transfer it the trailer. Neither I nor New York Motor Group had engaged in any previous dealings with Auto Solution or its owners. Auto Solution was completely unrelated to New York Motor Group. It entered its own lease with the landlord and acquired its own inventory. It remains active at the same

premises. I am advised by my attorney that Auto Solution used a different vendor to install a more advanced surveillance system in 2014, and that old components of New York Motor Group's system were then discarded.

8. Attorney Bruce Minsky was hired to defend Nada and me and the dealership defendants in five of the initial six cases herein; attorney Lloyd Weinstein was hired to defend in the Tuhin case. I told both the foregoing information about the dealership's surveillance system and the limited eight-days retention of the information on the hard drive. The exhibits to plaintiffs' motion and the discovery responses reveal disclosure of the foregoing was continually made to plaintiffs' counsel, who could have addressed this to the court during the four years of extensive discovery conferences.

9. Attorney Richard Simon substituted in September 2014 in place of attorney Weinstein in the Tuhin case and in June 2016 in place of attorney Minsky in the other related cases. I am informed he confirmed to plaintiffs' counsel the same information as had been provided by predecessor counsel. The pending motion for spoliation sanctions is thus improper, as the matter could have been brought to the court's attention by plaintiffs' counsel during the four years of discovery conferences, and there cannot be spoliation of information which couldn't be preserved anyway on the subject hard drive.

Dated: March 23, 2017

MAMDOH ELTOUBY